

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

STERICYCLE, INC.

Employer

and

Case No. 8-RC-15997

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 377, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Parties have filed briefs that have been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time drivers, maintenance, warehouse and plant employees employed by the Employer at its Warren, Ohio facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

There are approximately 57 employees in the unit found appropriate herein.

The Petitioner filed a petition seeking to represent the Employer's drivers, maintenance, warehouse and plant employees. At the hearing, the Employer took the position that the petitioned for unit was not an appropriate unit. Although asked by the Hearing Officer, the Employer would not take a position as to what job classifications constituted an appropriate unit. In its post hearing brief, the Employer asserts that the appropriate unit in this matter consists of drivers and plant operators in one unit and the 6 or 7 maintenance employees in a separate unit. For the reasons detailed below, I find that the unit sought by the Petitioner constitutes *an* appropriate unit.²

² In its brief, the Petitioner relies upon the Board's decisions in Mariah, Inc., 322 NLRB 586 (1996) and Bennett Industries, Inc., 31 NLRB 1363 (1994) to argue that it would be appropriate to dismiss the Employer's objections to the unit sought by the Petitioner since it refused to state what it considered to be an appropriate unit at the hearing. I conclude that Bennett does not apply to the present matter since in that case the employer refused to state a position at the hearing or in its brief. Here, while the Employer would not state at the hearing what it believed to be an appropriate unit, it did so in its post-hearing brief. I also note that in Mariah the employer filed a post-hearing brief on the unit question after initially refusing to take a position at the hearing. Accordingly, I have considered the Employer's position on what constitutes an appropriate unit in reaching my decision herein.

At its facility in Warren, Ohio the Employer is in the business of collecting, processing and disposing medical waste. The Employer operates similar facilities throughout the United States, Canada and Puerto Rico. The record reflects that the Employer acquired the Warren facility from BFI Waste Management in November, 1999. In addition to the 6 or 7 maintenance employees, at the time of the hearing, the Employer employed approximately 24 drivers, 25 plant operators, and one warehouse coordinator.

The record reveals that Facility Operations Manager Rodney Skeen has the day to day responsibility to ensure the successful operation of the Warren, Ohio facility. He reports to District Manager Paul Stacharczyk. One transportation manager, four shift supervisors and a maintenance manager report directly to Skeen. The drivers are supervised by Jeff Simms, the transportation manager. Maintenance employees are supervised by Dale Silvis and the plant operators are supervised by the shift supervisors. The sole warehouse coordinator, Gary Johnson, reports directly to Skeen.³

The Employer has two classifications of drivers, long haul drivers and collection drivers. Long haul drivers operate tractor trailers and their hours of work vary depending on length of the trip. These drivers pick up trailers from customers or they may carry an empty trailer to a larger customer, such as a hospital. Long haul drivers trade off an empty trailer for one that is loaded and ready to be returned to the plant for disposal. Collection drivers work in the Warren area and pick up waste from a variety of businesses such as dental and medical offices or clinics. Collection drivers work an eight hour day. An outside concern is responsible for the removal of treated waste.

³ I note that Johnson is not among the individuals that the Parties agreed were ineligible to vote in any election directed herein.

Plant workers consist of incinerator operators and autoclave operators. The incinerator operators load waste into the incinerator and monitor the equipment that burns waste. Autoclave operators load waste into the autoclave and monitor the equipment that steam treats waste. The operators also assist in unloading the trucks. The incinerator operators work two-twelve hours shifts that run from 7:00 AM to 7:00 PM, three days on and three days off. Although the record does not reflect the exact hours, the autoclave operators work three overlapping shifts, from 10 to 12 hours long, three days on and three days off.

Maintenance employees work in the plant and in a separate building located about 500 feet from the plant. These employees repair and otherwise maintain the trucks and the equipment used in the plant to dispose of waste. Their job skills include welding and working on electrical and hydraulic equipment. While the shift hours were not specified, Richard Kogler, the Employer's Chief Operating Officer over domestic operations, testified that maintenance is performed around the clock. Maintenance employees work eight hour shifts, five days a week.

The warehouse coordinator, Gary Johnson, is responsible for cleaning containers referred to as tubs. He also supplies the trucks with boxes for customers. Johnson works an eight-hour shift, although the record does not reflect what his particular hours of work may be.

With regard to wages, the drivers receive incentive-based pay. Kogler testified that plant operators earn an hourly rate in addition to incentive pay. I note that incinerator operator, John Flight, testified that since the Employer acquired the business from BFI Waste Management, plant employees been paid only on an hourly basis. Maintenance employees earn an hourly wage. The record does not refer to the type of wage rate that applies to the Warehouse Coordinator. There is no record evidence regarding the actual rates of pay that apply to any of the job classifications under consideration.

Flight testified that while performing his duties as an incinerator operator he has contact with maintenance employees three times per shift. A maintenance employee confers with Flight to ensure that the equipment is operating normally. This includes checking on the temperature that the equipment is operating at. Additionally, operators contact maintenance employees directly if they are experiencing problems with the incinerators. Flight also testified that when he worked as an autoclave operator he was in contact with a maintenance employee one time per shift unless he also had to notify a maintenance employee of a particular problem.

At times, operators assist maintenance employees in the performance of maintenance tasks. Flight testified that he has ground and cut containers that in turn are welded by maintenance employees. On two occasions in the three months prior to the hearing, Flight also assisted maintenance employees in compacting boxes. Both incinerator operators and maintenance employees calibrate the PH level of water in the incinerator. The Employer has scheduled shut downs approximately every three months. During the last shutdown, Flight performed maintenance work in the incinerator that included using a jackhammer to break off glass as a part of the cleaning process. He has also changed breaks on a conveyor and helped to install a hydraulic cylinder.

Although it is not in their job descriptions, drivers and mechanics unload trucks. I note that the record does not reflect the frequency with which this occurs. While the Employer conceded in its brief that the drivers and maintenance employees have contact with each other respect to the upkeep of the trucks, the record does not reveal the frequency or extent of the contact. Kogler testified that maintenance employees drive trucks for the purpose of evaluation and repair. Flight testified that on occasion he has acted as an assistant driver if, for example, the driver cannot load containers onto the truck due to a medical condition such as an injured back.

Transfers among the job classifications appears to be minimal. According to Flight, one employee moved from a driver position to work in the plant. That same employee, Bill Luzar, then went from the plant worker position to a maintenance job. The record does not reveal when any of this occurred. About two years ago Gary Johnson moved from a plant position to the warehouse.

With regard to general working conditions, the Employer's policy handbook, including disciplinary rules, applies to all job classifications. The same health insurance and retirement benefits are available to all employees. Employees enjoy the same benefits with regard to vacation time and holiday pay. All employees punch the same time clock, use the same locker rooms and break room.⁴ All employees wear uniforms.

When determining whether various job classifications of employees share a sufficient community of interest to include them in a bargaining unit, the Board considers the following factors: common supervision, the degree of functional integration, the interchangeability and contact among various employee classifications, the nature of employee skills and functions, location of the work situs and similarities in general working conditions and fringe benefits. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

In weighing the above factors the Board is guided by the principle that the Act requires an election in an appropriate unit. This does not mean that the unit must be the most appropriate, or that there might not be other units that are more appropriate. Hotel Services Group, Inc., 328 NLRB No. 30 (1999), citing Morand Bros. Beverage Co., 91 NLRB 409 (1950). The Board has

⁴ There are two locker rooms; one designated for drivers and the other is used by plant workers. Kogler testified that only the drivers use the drivers locker room. Flight testified that employees use either locker room. I note that Kogler has been in the Warren facility on only one occasion, while Flight is a seven year employee. Accordingly, on this point I find Flight's testimony more probative.

also found that a plant-wide unit is presumptively appropriate. Airco, Inc., 273 NLRB 348, 349 (1984). The burden of proving that the interests of a given classification of employees, in this case the maintenance employees, are so disparate from those of other employees that they cannot be represented in the same unit rests with the party challenging the unit's appropriateness. Livingstone College, 290 NLRB 304 (1988). Under the circumstances presented in this case, I find that the petitioned-for plant-wide unit is appropriate.

I note that as a general rule, the Board considers drivers and mechanics, who work on the driver's trucks, to be functionally integrated and finds that they may be appropriately included in the same unit. Courier Dispatch Group, Inc., 311 NLRB 728, 732 (1993). In NLRB v. Great Western Produce, 839 F.2d 555 (9th Cir., 1988) a unit of warehouse employees, drivers and mechanics was found to be appropriate notwithstanding the fact that the mechanics worked in a separate building and seldom entered the warehouse where other employees worked. The Court upheld the Acting Regional Director's finding that duties including the servicing and repair of trucks and forklifts used by drivers and warehousemen, made the mechanics an essential link in the employer's operations and they were appropriately included in the bargaining unit. The related functions of drivers and mechanics weighed in favor of their inclusion in the same unit.

In the instant case, not only do the maintenance employees service and repair the drivers trucks, I find that their duties are also functionally integrated with the duties of plant operators. The record reveals that a key duty of the incinerator and autoclave operators is to constantly monitor the equipment for any potential problems. To this end, maintenance employees enter the plant on a regular basis to monitor and repair equipment. This also brings them into appreciable contact with the plant employees. Given their responsibilities to monitor and repair

the Employer's trucks and equipment, the maintenance employees constitute an essential link in the Employer's operations.

While maintenance employees possess skills relative to their duties to weld and repair various types of equipment, there is no record evidence that the Employer's hiring policy requires that they be licensed or have any special certification or schooling, such as an in-house apprenticeship or required training programs. These are relevant factors to be considered when assessing the skill level of maintenance employees as compared to other job classifications. Harrah's Illinois Corp., 319 NLRB 749, 751 (1995); Skyline Distributors, 319 NLRB 270, 277 (1995); Ore-Ida Foods, 313 NLRB 1016, 1019.

In discussing the skill level of maintenance employees as a point of distinction from the other employees, the Employer relied upon University of Hartford, 295 NLRB 797 (1989). In that case there was evidence that the employer required previous work related experience, specialized study beyond high school and for some classifications, journeyman-level training and licenses. No such evidence is present in this record.⁵

With regard to wages, I note that there is no record evidence that maintenance employees are paid higher wage rates than drivers or operators because of their skill level. While I note that drivers and maintenance employees have different methods of compensation, given the other community of interest factors present in this case, this is not a basis to exclude the maintenance employees from a petitioned-for plant-wide unit. Evening News, 308 NLRB 563, 567 (1992).

I also find that the fact that employees do not share common first line supervision does not outweigh other factors present in this case such as the similarities in general working

⁵ I find that K-Mart Corporation, 323 NLRB 582 (1997) and the other cases relied upon by the Employer to be distinguishable as well.

conditions and benefits, overlapping job duties as well as the degree of employee interaction and functional integration.

I find that the Employer has not met its burden to establish that the only appropriate unit in this case consists of a unit of drivers and plant workers and a separate unit of maintenance employees. Accordingly, I find the unit sought by the Petitioner is an appropriate unit for the purposes of collective bargaining and I shall direct an election in such a unit.

The Parties agreed that the following employees are ineligible to vote in the election directed herein:

Steve Tayala	-	Shift Supervisor
Dave Thompson	-	Shift Supervisor
Terry Flanigan	-	Shift Supervisor
Dave Margo	-	Shift Supervisor
Dale Silvis	-	Maintenance Manager
Rodney Skeen	-	Facility Operations Manager
Jeff Simms	-	Transportation Manager

As there is no record evidence to the contrary, I accept the Parties foregoing stipulation and exclude the above-named individuals from the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the

United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Local 377, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **February 23, 2000**.

Dated at Cleveland, Ohio this 9th day of February 2000.

/s/ Donald A. Knowlton

Donald A. Knowlton
Acting Regional Director
National Labor Relations Board
Region 8

440-1760-4500